the Commissioner of Police was only doing what any head of department should have done in his administrative capacity. The concluding paragraph of the Commissioner's letter of February 27, 1963, that "proceedings under regulation 40 of the same Regulations are being contemplated and during the period you will receive no emoluments pending a decision by the Disciplinary Authority" left no room for doubt that the Commissioner made the order as an administrative officer who had to act promptly pending a proper inquiry to be held in due course. There was nothing even remotely *quasi*-judicial about the act. To conclude, I need only quote one case, *R.* v. *Metropolitan Police Commission, Ex parte Parker*,(1) in which Lord Goddard C.J. said:

". . . where a person, whether he is a military officer, a police officer, or any other person whose duty it is to act in matters of discipline, is exercising disciplinary powers, it is most undesirable, in my opinion, that he should be fettered by threats of orders of *certiorari* and so forth, because that interferes with the free and proper exercise of the disciplinary powers which he has."

For the above reasons I had dismissed the application summarily with costs.

Application dismissed.

CHAI KOI v. WONG YIT CHEN & ANOR.

[O.C.J. (Ong J.) July 29, 1964]

[K.L. — Civil Suit No. 227 of 1963]

Damages — Claim for — Earlier application for compensation under Workmen's Compensation Ordinance — Election — Whether effective.

Workmen's Compensation Ordinance, 1952, s. 20.

This was a claim for damages by the administrator of the estate of Ter Hong Hui deceased on behalf of the widow and infant son who were dependants of the deceased. It was alleged that the death of the deceased was due to the negligent driving of the first defendant who was the servant and agent of the second defendant. The deceased was at the time of his death employed as a lorry driver by a merchant who had taken out a Workmen's Compensation Insurance Policy for him. The deceased's father had applied to the Commissioner for Labour for payment of compensation to the dependants of the deceased. An inquiry was held and orders for compensation to the widow and the son were made. The widow had not attained the age of majority at the date of the inquiry. The defence in the action was based on section 20 of the Workmen's Compensation Ordinance in that compensation had already been applied for under the Ordinance.

Held: (1) no effective election had been made in this case as the widow was unaware of her common law right and could not therefore have made a valid election;

(2) as the Commissioner for Labour had failed to record the agreement for payment of compensation, there was in effect no agreement on the record and even if there was it was not legally binding on the widow who was still an infant;

(3) the mere fact that the widow had pursued one of two alternative remedies in ignorance of her rights will not prevent her from afterwards pursuing the other and therefore judgment must in this case be given in favour of the plaintiff.

Cases referred to:—

(1) *Scarf* v. *Jardine* L.R. 7 App. Cas. 345, 353, 360.

(2) *Perkins* v. *Hugh Stevenson & Sons Ltd.* [1940] 1 K.B. 56.

(3) *Huckle* v. *London County Council* (1909-10) 26 T.L.R. 580 and (1910-11) 27 T.L.R. 112.

(4) *Olson* v. *Magnesium Castings and Products Ltd.* [1947] 1 All E.R. 333.

(5) *Young* v. *Bristol Aeroplane Co. Ltd.* [1946] 1 All E.R. 98.

(6) *Narayaniamma* v. *Mohamed Din* [1959] M.L.J. 109.

CIVIL SUIT.

Kam Woon Wah for the plaintiff.

Lall Singh Muker for the defendants.

Cur. Adv. Vult.

Ong J.: This is a claim for damages by the administrator of the estate of one Ter Hong Hui, deceased, on behalf of the widow and infant son who were dependants of the deceased, under section 7 of the Civil Law Ordinance, 1956. It was alleged that the death of the deceased was due to the negligence of the first defendant who was the servant and agent of the second defendant.

On March 2, 1962, on the Puchong-Klang Road a head-on collision occurred between two motor-lorries in broad daylight, as the result of which the deceased, who was driving BE 8634, and his attendant both died of their injuries. This vehicle was travelling on its own proper side of the road; the other, BE. 487, which collided with it, was not. There is no question. therefore, that the first defendant was negligent in driving on the wrong side of the road.

The deceased was at the time of his death employed by a merchant, Tan Kai Kew, who had taken out a Workmen's Compensation Insurance Policy for the driver of this lorry. The deceased's father duly applied to the Commissioner for Labour, Port Swettenham, for payment of compensation under the Workmen's Compensation Ordinance, 1952, to the dependants of the deceased. The Assistant Commissioner for Labour then held an inquiry under section 27 of the Ordinance. According to the notes taken at such inquiry, the deceased's widow, Tee Ter, was appointed with her own consent as the representative of her son, Ter Soon Huat, aged 2 years, under regulation 47 of the Workmen's Compensation Regulations, 1953. The objects of such inquiry were (1) to determine the number of dependents, if any, of the deceased and the degree of their dependency; and (2) to distribute the compensation of $4,529.88 deposited with the

Commissioner by the employer. The finding was that the widow and son were totally dependent on the deceased and the order made thereon apportioned $1,429.88 to the widow and $3,000 to the son. It was further ordered that the amount due to the widow be paid to her forthwith and the moneys due to the son be held in trust by the Assistant State Commissioner for Labour, Port Swettenham, to be paid out monthly at his discretion. The payment to the widow was made on November 27, 1962, but was refunded by her through her solicitors on December 10, 1962. The widow was born on July 22, 1942 so that at the date of the inquiry she had not yet attained the age of majority. The deceased's father, Chai Kow, otherwise known as Ther Kow, was not granted letters of administration to his estate until nearly three months later — on February 13, 1963 — and he commenced this action against the defendants on April 1, 1963.

The defence in this action is that as Tee Ter, the widow of the deceased made application to the Labour Department, Port Swettenham, on Form H for compensation under the Workmen's Compensation Ordinance for herself and her infant son, Ter Soon Huat, and the sum of $4,529.88 was awarded to the widow and her son in an order made on the 20th day of November 1962 by the Labour Officer and the widow accepted and received payment of the sum of $1,429.88 as her share, leaving the share due to the infant son to be dealt with by the Labour Department, no claim can be maintained in this action on account of loss of dependency by the widow and her infant son, by reason of section 20(a) of the Workmen's Compensation Ordinance. The section provides as follows:

"20. Where any injury for which compensation is payable under this Ordinance was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof —

(a) the workman may take proceedings against that person to recover damages and may claim against any person liable to pay compensation under this Ordinance, but he shall not be entitled to recover both damages and compensation;"

Evidence was given by the plaintiff, the deceased's widow and the deceased's employer to the effect that it was never the intention of the plaintiff or the widow to abandon the claim to damages against these defendants but they had sought compensation through the Labour Office merely with a view to obtain funds as expenses for an action to be brought for damages. It was further alleged that they had always intended to refund the compensation after receipt of the damages. If this was true, it is clear that an election had been made which would preclude the alternative claim to damages: see *Scarf* v. *Jardine.*[1]

Counsel for the defendants relied on *Perkins* v. *Hugh Stevenson & Sons Ltd.*,[2] where a workman who was injured by an accident arising out of and in the course of his employment, applied for and was paid weekly sums by way of compensation under the Workmen's Compensation Act, 1925. Subsequently he obtained the assistance of a solicitor who wrote to the employers claiming that the weekly payments received and to be received by the plaintiff had been and would be received by him without prejudice to any remedy outside the Act. After such letter the workman continued to receive weekly payments for almost one year and to give unqualified receipts for them. About six months after the accident he brought an action claiming damages for negligence. It was held that as the plaintiff had claimed and been paid compensation under the Act, his employers could not also be made liable for damages independently of the Act and that the plaintiff by continuing to receive compensation and to give unconditional receipts after the date of his solicitor's letter, must be taken to have exercised the option conferred by section 29(1) by electing to take compensation under the Act.

In my view, however, no effective election had been made between the alternative remedies in this case. The Assistant Commissioner for Labour, who was a witness on behalf of the plaintiff, had no recollection of any expression of intention on the part of the applicant to refund the moneys received by way of compensation in the event of a claim for damages proving successful. In cross-examination he said that he had explained to the widow and father of the deceased the nature of their "alternative remedies", and that in doing so he had had recourse to the services of an interpreter. I felt, however, that I ought to be satisfied that his explanation was in fact understood by these two ignorant and illiterate people. The labour officer was unable to say whether the interpreter he had used was a qualified man. Further, in his own words, he had spelt out the nature of his explanation; he said, "I had told them that they could claim compensation under the Workmen's Compensation Ordinance or damages at common law. I had further told them that if they wanted to claim compensation, they would have to give it to me in writing. That is all I would have said to them." I do not think that the interpreter himself could have appreciated the distinction between "compensation under the Workmen's Compensation Ordinance" and "damages at common law"; much less do I think that the deceased's father or the widow could have understood what the interpreter must himself have been at a complete loss to understand. It is therefore transparently clear that they could not

have made a valid election: see *Huckle* v. *The London County Council.*[3]

As Lord Greene M.R. said in *Olson* v. *Magnesium Castings & Products Ltd.*,[4] at page 333:

"The point made here is that we ought to hold on the evidence that the workman had accepted payment under the Workmen's Compensation Act, 1925, knowing that he had, or might have, a common law right, and that, in view of that knowledge, the receipt of those payments operated as an exercise by him of the option which the sub-section gives him in accordance with the opinions of the majority of the House of Lords in *Young* v. *Bristol Aeroplane Co. Ltd.*[5] I can find no evidence which would justify the conclusion that the workman, when he received those payments, knew of the existence of his common law right."

In the instant case I am satisfied that the widow was unaware of her common law right.

On other grounds too the defence must fail for reasons which I shall state briefly. First, under section 27 of the Workmen's Compensation Ordinance, what the labour officer had to do was to hold an inquiry purely for the purposes of settling by agreement any matters in difference between the workmen (or his dependants) and the employer. The Assistant Commissioner for Labour in this case failed to record the agreement as required by section 28 of the Ordinance, so that in effect there is no agreement on the record for any payment of compensation.

Secondly, even had he done so, the agreement was not legally binding on the widow who was then still an infant. The deceased's father, too, had no *locus standi* as the grant of letters of administration had not yet been issued to him. In any event, such an agreement on behalf of the minor beneficiaries of a deceased person's estate require the approval of the court in order to be binding on them: see R.S.C. O. 22 r. 14 and *Narayaniamma* v. *Mohamed Din.*[6]

Thirdly, the law applicable to the facts of a case like the present one is clearly stated in the following passage in 15 *Halsbury* (3rd Ed.) at p. 173:

"The mere fact, however, of a man with two alternative remedies having in ignorance of his rights pursued one and received a payment thereby, will not prevent him from afterwards pursuing the other, if he is able and willing to restore what he has received so as to prevent any wrong being done to any person by his change of remedy."

For the above reasons I would give judgment in favour of the plaintiff.

As to the quantum of damages, I assess the special damages, which were not seriously disputed, at $800 for funeral expenses. As to loss suffered by the deceased's dependants by reason of his death, the deceased was a comparatively young man, 25 years old when he died. His widow was then just under 20 years old and his son was an infant of 2 years. The deceased's earnings were $120 p.m. with board supplied by his employer. Although the evidence is somewhat vague as to facts and figures, his wife and son were totally dependant on him and she received in addition $25 to $35 per month as pocket money. Taking all relevant circumstances into consideration I think a sum of $10,000 would be fair and reasonable compensation for the loss suffered by these two dependants. I would apportion this sum between the widow and son equally. Costs of this action to the plaintiff.

Order accordingly.

Solicitors: *Kam Woon Wah & Co.*; *Lovelace & Hastings.*

PENINSULAR & ORIENTAL STEAM NAVIGATION CO. LTD. & ORS. v. RAMBLER CYCLE CO. LTD.

[F.C. (Thomson L.P., Wee Chong Jin C.J. (Singapore) and Wylie C.J. (Borneo)) August 17, 1964]

[Singapore — Federal Court Civil Appeal No. 37 of 1963]

Contract — Limitation — Bills of Lading — Liability arising after discharge of goods from ship — Applicability of art. III, r. 6 of the Rules set out in Schedule to Carriage of Goods by Sea Act, 1924 — "Loss or Damage".

Carriage of goods by sea — Application of art. III r. 6 of Hague Rules — Whether applies to goods before or after discharge — Hague Rules art. II — "Loss" in relation to discharge of goods — "Discharge" and "delivery".

In September 1953, the Rambler Cycle Company Limited consigned a large quantity of bicycles and bicycle parts to persons in Singapore trading under the name of Southern Trading Company. The goods were shipped on the s.s. *Chusan* of which the owners are the Peninsular and Oriental Steam Navigation Company Limited from London to Singapore on five bills of lading dated September 25, 1953. Each of these showed the shipper as the Rambler Cycle Company and the goods were consigned to "order". The bills of lading contained the usual clause paramount making them subject to the provisions of the Carriage of Goods by Sea Act, 1924. The ship arrived at Singapore on October 25, 1953 and on October 27, the goods were discharged from the ship and were placed in storage in the godowns of the Singapore Harbour Board. The same day the shipping company's agents, Messrs. Islay Kerr, gave the Southern Trading Company an order on the Singapore Harbour Board for the delivery of the goods. The Southern Trading Company were not in possession of the bills of lading but they furnished a letter of indemnity by the Sze Hai Tong Bank Limited. The same day the Singapore Harbour Board delivered the goods to the Southern Trading Company against Messrs. Islay Kerr's delivery order. Eighteen months later, that is on April 27, 1955, the Bank of China Limited sent to Messrs. Islay Kerr a notice stating that they held the bills of lading and claiming that "the goods were hypothecated to them". The Rambler Cycle Company not having recovered the goods or been paid any part of their price commenced proceedings against the shipping company for damages for breach of contract and/or duty in and about the carriage of goods by sea and the delivery thereof and/or for damages for the loss and/or conversion and/or non-delivery of such goods. The shipping company joined the Sze Hai Tong Bank Limited and the Southern Trading Company as third parties to the proceedings and